

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION  
3 UNITED STATES OF AMERICA, ) Case 1:18-cr-00457  
4 Plaintiff, )  
5 v. ) Alexandria, Virginia  
6 BIJAN RAFIEKIAN, ) July 8, 2019  
and ) 2:08 p.m.  
7 KAMIL EKIM ALPTEKIN, )  
8 Defendants. )  
9 \_\_\_\_\_ ) Pages 1 - 8

10 TRANSCRIPT OF MOTION HEARING  
11 BEFORE THE HONORABLE ANTHONY J. TRENGA  
12 UNITED STATES DISTRICT COURT JUDGE  
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25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES:

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1 THE CLERK: Criminal Case 1:18-cr-457, *United*  
2 *States v. Bijan Rafiekian, et al.*

3 Counsel, will you please note your  
4 appearances for the record.

5 MR. GILLIS: Good afternoon, Your Honor. Jim  
6 Gillis, Evan Turgeon, and Katie Sweeten for the United  
7 States.

8 MR. MACDOUGALL: Good afternoon, Your Honor.  
9 Mark MacDougall, Stacey Mitchell, and Robert Trout for  
10 the defendant, Bijan Rafiekian.

11 THE COURT: All right. We're here on a  
12 hearing with respect to whether the Court's ordered  
13 nondisclosure of the notice of correction should remain  
14 under seal or not. I've reviewed the supplemental  
15 filings.

16 I take it in light of the defense's position,  
17 Mr. Gillis, that you have no objection to unsealing the  
18 notice.

19 MR. GILLIS: I do not, Your Honor. No, Your  
20 Honor, I do not have any objection to unsealing the  
21 notice.

22 THE COURT: Or putting aside your motion  
23 itself or any of the filings pertaining to that notice,  
24 all of which have been placed under seal because the  
25 notice was under seal?

1 MR. GILLIS: No, Your Honor, I have no  
2 objection to that either.

3 THE COURT: All right. Mr. MacDougall.

4 MR. GILLIS: Our only objection, just to be  
5 clear, is to the *ex parte* motion itself.

6 THE COURT: I understand.

7 Mr. MacDougall.

8 MR. MACDOUGALL: Yes, Your Honor. We're,  
9 obviously, in accord with the government's view. We  
10 take no position with respect to the *ex parte*  
11 submission, not knowing what's in it. We leave that to  
12 the sound discretion of the Court, whether that ought  
13 to be unsealed or not, Your Honor.

14 One point, Your Honor, if I may.

15 First, I want to thank the Court for changing  
16 the time to this afternoon. That was very helpful to  
17 the defense. We certainly appreciate it.

18 There's a document attached to the  
19 government's memorandum that is an e-mail from Kristen  
20 Verderame to Mr. Rafiekian and several other people  
21 regarding Flynn activities. Our reading of that is  
22 that that would be privileged with respect to FIG,  
23 Flynn Intel Group, and it is outside the June 13, 2018,  
24 waiver letter. It was marked as privileged initially  
25 by Covington when they produced it to us.

1           Mr. Gillis and I have corresponded about that  
2 subject this morning. He can, of course, speak for  
3 himself. We may have received that in the 8 terabytes  
4 of material we received, but that doesn't diminish the  
5 privileged nature of that document.

6           So we're not asking the Court to rule on that  
7 today. I know the issue of privilege has been well  
8 briefed. To the extent that -- we believe that  
9 document is privileged. We would ask that that remain  
10 under seal.

11           THE COURT: Privileged as to Mr. Rafiekian  
12 personally or FIG because there's been no waiver?

13           MR. MACDOUGALL: Flynn Intel Group because  
14 there's been no waiver and to the extent Mr. Rafiekian  
15 is a beneficiary of that waiver himself as well.

16           THE COURT: All right. That's one of the  
17 exhibits to the government's response?

18           MR. MACDOUGALL: Yes, Your Honor.

19           THE COURT: All right.

20           MR. MACDOUGALL: Thank you.

21           THE COURT: All right. The Court is going to  
22 unseal the notice of correction. The Court is also  
23 going to unseal all the related filings with the  
24 exception that the Court will keep under seal pending  
25 further order of the Court the exhibit that has just

1 been referenced pertaining to the communications  
2 between Ms. Verderame and Mr. Rafiekian.

3 All right. Also, I just received a  
4 memorandum on behalf of General Flynn. It was filed  
5 under seal. Although, no motion was filed, and the  
6 Court didn't authorize it under seal. I'm going to  
7 unseal that unless there's some objection you want to  
8 be heard on.

9 MR. BINNALL: Your Honor, we --

10 THE COURT: Why don't you come forward and  
11 identify yourself, Mr. Binnall.

12 MR. BINNALL: Thank you, Your Honor.

13 May it please the Court. Jesse Binnall on  
14 behalf of General Flynn.

15 THE COURT: Yes.

16 MR. BINNALL: Your Honor, we filed a motion  
17 this afternoon for leave to file this under seal. That  
18 being said, the relief requested in that motion was  
19 that it be under seal as long as the underlying motion  
20 was under seal. So we have no objection.

21 THE COURT: All right. That will be unsealed  
22 as well.

23 MR. BINNALL: Thank you, Your Honor.

24 THE COURT: All right. I don't know if  
25 there's anybody else.

1           This proceeding will remain open.

2           The defense has filed a motion for  
3 miscellaneous relief. I'd like the government to  
4 respond to that by Wednesday if you would.

5           MR. GILLIS: Excuse me, Your Honor. May I  
6 have a moment?

7           THE COURT: Yes.

8           (Counsel confer.)

9           MR. GILLIS: Your Honor, I intended for what  
10 we filed --

11          THE COURT: I was going to observe that.  
12 There's been some overlap of the responses in terms of  
13 what's responding to what. The government has  
14 responded as much as it wants to?

15          MR. GILLIS: Yes. We responded, and we can  
16 rest on our papers unless you have any questions, Your  
17 Honor.

18          THE COURT: All right. What I'm going to do  
19 is a couple of things. There's been a publicly filed  
20 notice of a Section 5 issue that the defense has filed.  
21 I'm going to continue that hearing for 1:00 on  
22 Wednesday. Before then I want the defense to advise  
23 the Court whether its position has changed with respect  
24 to its Section 5 notice in light of the government's  
25 decision not to call Mr. Flynn.

1 MR. MACDOUGALL: Yes, Your Honor. To  
2 clarify, that was the subject matter of the last --

3 THE COURT: Yes.

4 MR. MACDOUGALL: Thank you, Your Honor.

5 THE COURT: All right. We'll hear argument  
6 as well on the outstanding issues that the defense has  
7 raised in light of the government's notice of  
8 correction.

9 All right. Let me see the government at the  
10 sidebar, please.

11 (Under seal transcript under separate cover.)

12 THE COURT: All right. Anything else?

13 MR. TURGEON: Not from the government, Your  
14 Honor.

15 MR. MACDOUGALL: Nothing from the defense,  
16 Your Honor. Thank you.

17 THE COURT: All right. Counsel is excused.  
18 The Court will stand in recess.

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20 Time: 2:17 p.m.

21 I certify that the foregoing is a true and  
22 accurate transcription of my stenographic notes.  
23

24  
25 /s/  
Rhonda F. Montgomery, CCR, RPR